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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CONNIE PAN-YU et al.,

Plaintiffs and Respondents,

v.

JING-JIANG NI,

Defendant and Appellant.

B213773

(Los Angeles County
Super. Ct. No. BC374969)

APPEAL from a judgment of the Superior Court of Los Angeles County.
William F. Fahey, Judge. Affirmed.

Bruce C. Janke; Schein & Cai, and James Cai for Defendant and Appellant.

Fox Rothschild and Malcolm S. McNeil; Law Offices of Paul M. Ma and Paul M.
Ma for Plaintiff and Respondent Connie Pan-Yu.

This matter involves a dispute between former business associates which escalated into a lawsuit for defamation. In a special verdict, the jury found one statement to be defamatory, but not the other one. Appellant Jing-Jiang Ni contends the jury's verdict is internally inconsistent because both statements relate to the same course of conduct. We find no inconsistency and affirm the judgment.

FACTS

Ni and respondent Connie Pan-Yu had been friends since 1998. In 2002, they, together with their husbands, formed a company called StarBridge Arts, Inc., which was conceived to put on live performances with talent from China. Pan-Yu served as general manager while Ni dealt with the performers. Pan-Yu's husband was a 50 percent shareholder in StarBridge and the Nis owned the remaining 50 percent.

In July 2005, Pan-Yu was referred to Steve Opson, who had an idea to organize a variety of business and cultural events in 2008 called Destination China to showcase the Beijing Olympics. The centerpiece of Destination China would be a sailboat regatta from all around the world sailing to China. The project was planned to be a joint venture among StarBridge, Pallanza Media Productions, L.L.C. (a company in which Opson was a principal) and Capstone Global, L.L.C. (a company owned by Michael Scordino). Opson believed StarBridge and Pan-Yu would provide an introduction to Chinese officials that could help develop the regatta idea.

Opson traveled to China four times with Pan-Yu and other associates in 2005 and 2006 to advance his idea to various government officials. At trial, there was conflicting testimony as to whether Pan-Yu attended those meetings as a representative of StarBridge or on her own behalf. Pan-Yu told Ni and her husband in 2006 that the regatta project had failed and thought it was none of Ni's business that she was working personally with Opson. Opson testified that Pan-Yu told him StarBridge was no longer interested in participating and that it would not invest any money.

On June 12, 2006, DC8 Global, LLC was formed to produce Destination China with funds to be raised from sponsors. DC8 consisted of four partners—Pan-Yu, Scordino, Opson and Michael Gabriel, Opson’s associate. Pan-Yu invested \$93,000 in DC8, representing a 16.67 percent ownership in the company and signed an employment contract on July 12, 2006, to be DC8’s vice president of China Business Development. DC8 entered into a memorandum of understanding with the Chinese Water Sports Administration, which allowed it to conduct business in China and seek sponsorships for Destination China.

On April 17, 2007, Pan-Yu and Scordino resigned from DC8 and in May 2007, Pan-Yu became a director of corporate development at Capstone, the company owned by Scordino. Capstone also began to promote a regatta project to China called Celebration China.

Meanwhile, StarBridge began having financial difficulties and Pan-Yu urged the Nis to file bankruptcy. StarBridge filed for bankruptcy on July 31, 2007. Pan-Yu formally resigned from StarBridge on April 18, 2007. Thereafter, Ni’s husband contacted Opson to ask about a silk embroidery project that Opson had worked on with StarBridge. When they met in June 2007, Opson told Ni’s husband about Pan-Yu’s continued involvement in Destination China and her subsequent resignation to work at Capstone on a similar regatta project. Ni became upset when she learned about this from her husband.

After receiving further information from Opson and Gabriel, Ni drafted a letter in Chinese titled “Complaint on Pan LiePei’s [Connie Pan-Yu’s Chinese name] stealing the project from the StarBridge Art, Inc., and illegally raising funds in the name of the Beijing 2008 Olympic Games”. Among other things, it accused Pan-Yu of “squandering hundreds of thousands of U.S. dollars of [DC8 Global]” and “continuously sucked gold¹ in the name of the ‘Olympic Games’.” Ni sent the letter by e-mail to six or seven people to ask for their opinion. Three people replied that it was up to Ni to decide whether to

¹ The term “sucked gold” is a Chinese colloquialism meaning to take money.

use the statements in the letter, but she could only use them if they were true. The letter was brought to Pan-Yu's attention by a director of the China Olympic Sailing Committee on July 11, 2007.

Scordino and Pan-Yu sued Ni, Opson and StarBridge for defamation, intentional infliction of emotional distress, trade libel, intentional interference with actual prospective economic advantage and unfair business practices on July 27, 2007. In a special verdict, the jury found to be false the statement "Connie Pan-Yu steals . . . and raises funds illegally." Additionally, the jury found to be true the statement "Connie Pan-Yu stole corporate opportunities." The jury also found Pan-Yu suffered \$90,000 in damages and awarded \$50,000 in punitive damages against Ni. Ni filed her notice of appeal on January 29, 2009.

DISCUSSION

Ni's sole contention on appeal is that the two statements at issue "allege a single indivisible scheme by Pan-Yu to misappropriate Starbridge's trade secret and to illegally use it as a bargaining tool to attract funding for the project. The two statements about this same course of conduct cannot be both true and false." We disagree that the statements relate to the same course of conduct and find no inconsistency in the jury's verdict.

I. Waiver and Invited Error

We must first, however, consider whether Ni waived her right to attack the verdict because she not only failed to object to the verdict form, but invited any error by jointly submitting it to the court. It has been long held that "there was no requirement that the inconsistency of the two verdicts be first called to the attention of the trial judge in order to raise the question on appeal." (*Remy v. Exley Produce Express, Inc.* (1957) 148 Cal.App.2d 550, 554-555 [*Henriouille v. Marin Ventures, Inc.* (1978) 20 Cal.3d 512, 522; *Lambert v. General Motors* (1998) 67 Cal.App.4th 1179, 1182.]) Further, it is undisputed that both parties drafted the special verdict form. There is no indication that Ni knowingly created or foresaw any inconsistency in the verdict form at trial. "[W]e decline to disregard the inconsistency of the verdict or to interpret it in favor of plaintiff for this reason." (*Lambert v. General Motors, supra*, 67 Cal.App.4th at p. 1183.)

II. Inconsistent Verdict

We now address the substantive issue presented by this appeal. To do so, we are guided by a few well-established principles. Section 624 of the Code of Civil Procedure advises that a “special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the Court but to draw from them conclusions of law.” As a result, “a special verdict’s correctness must be analyzed as a matter of law. [Citation.]” (*Mendoza v. Club Car, Inc.* (2000) 81 Cal.App.4th 287, 303.) There is no presumption in favor of upholding a special verdict. (*City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 678 (*Horton*).) We therefore review the issue de novo. (*Ibid.*)

“General and special verdicts are deemed inconsistent when they are ‘beyond possibility of reconciliation under any possible application of the evidence and instructions.’ [Citation.]” (*Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 716.) When there is an inconsistency between answers within a special verdict, both questions are equally against the law. The appellate court is not permitted to choose between inconsistent answers. (*Horton, supra*, 126 Cal.App.4th at p. 682.)

Here, the jury completed the special verdict form as follows:

Question:	Did Jing-Jiang Ni make the following statement to persons other than Connie Pan-Yu? “Connie Pan-Yu steals ... and raises funds illegally.”
Answer:	Yes
Question:	Was the statement false?
Answer:	Yes
Question:	Did Jing-Jiang Ni make the following statement to persons other than Connie Pan-Yu? “Connie Pan-Yu stole corporate opportunities.”
Answer:	Yes
Question:	Was the statement false?
Answer:	No

Ni contends that the thing which Pan-Yu was accused of stealing in both statements is StarBridge's opportunity to participate in Destination China's regatta project. Therefore, the jury's conclusion that the first statement was false contradicts its finding that the second statement was true. The record, however, does not support Ni's theory that the terms "steals" and "stole" in the two statements refer to the same course of conduct.

Ni's letter (as translated from Chinese) reads in relevant part:

"In 2005, StartBridge (*sic*) Art, together with two other companies (Pollenza Media Group and Capstone Productions), planned a project named 'Destination China—2008', which was aimed to contribute to the success of the Beijing 2008 Olympic Games by holding a series of events related to the Olympic sailing events. . . . [¶] In order to guarantee the quality of this project, StarBridge Art named Pan Lipei (Connie Pan-Yu, her English name), then General Manager of StarBridge Art, to be in charge of this project. . . . [¶] . . . [¶] . . . Since then, using the resource and funds of StarBridge Art, Pan Lipei traveled several times between China and the U.S. in the name of operating the afore-mentioned project. When asked many times about the development of the project, Pan Lipei never provided any detail. Instead, she stalled off by saying that 'since the project is under way, information must be kept a secret to avoid it being stolen by others.' At around mid-2006, she just said: 'The project was not accepted by the Olympic Committee and can not be set up as a project. All we can do is to give up.' However, later investigation indicated that Pan Lipei had, on June 2006, behind StarBridge Art's back, registered a new company named DC8 Global, LLC, in Carson City, Nevada, with the two companies mentioned above, and became its vice president. This new company was established solely for the purpose of the project 'Destination China 2008'. Pan Lipei replaced the position of StarBridge Art in this project with her own name and became a shareholder of this new company.

"While holding the position of General Manager of StarBridge Art, Pan Lipei took advantage of the company's project and used it as an exchange condition for her personal interest. She set up another company with others and even held an important position in the company. Her acts have directly violated the interest of StarBridge Art, constituting a tremendous harm to StarBridge Art. [¶] . . . Even though she gained trust from the related Chinese government departments through deception, Pan Lipei and others did not pay any attention to the promotion of the project 'Destination China 2008,' and after squandering hundreds of thousand of U.S. dollars of initial operating funds of the new company, Pan Lipei felt

that, under the strict rules of fund raising at DC8 Global, LLC., she had nothing more to gain from the company. Therefore, several months ago, she colluded, under the table, with Capstone Productions, one of the two other shareholders of DC8 Global LLC, and dumped DC8 Global, LLC. Once again, by using ‘Destination China 2008’ as her bargaining counters, she plunged into the Capstone Productions and continuously sucked gold in the name of the ‘Olympic Games’.

“[¶] . . . [¶] . . . Pan Lipei took advantage of this sacred opportunity and under the banner of the ‘government support’. . . , she collected fund and raised money through browbeating and swindling.”

Here, the jury could reasonably have concluded that Ni referred to two separate courses of conduct in her letter: (1) Pan-Yu illegally raised funds for DC8 “through browbeating and swindling”; and (2) Pan-Yu stole the opportunity to participate in Destination China from StarBridge. It is clear that the first statement that Pan-Yu “steals” refers her “swindling” others in order to illegally raise funds for DC8 and not to her stealing a corporate opportunity from StarBridge. Accordingly, we see no inconsistency in the jury’s verdict.

DISPOSITION

The judgment is affirmed. Each party to bear her own costs of the appeal.

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BIGELOW, P. J.

We concur:

FLIER, J.

LICHTMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.